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50 CFR Parts 20 and 21

Migratory Bird Hunting and Permits; Regulations for Managing Resident Canada Goose Populations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AI32

Migratory Bird Hunting and Permits; Regulations for Managing Resident Canada Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and notice of record of decision.

SUMMARY: In recent years, the numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic growth to levels that are increasingly coming into conflict with people and human activities and causing personal and public property damage, as well as public health concerns, in many parts of the country. In February 2002, the U.S. Fish and Wildlife Service (Service or "we") completed a Draft Environmental Impact Statement (DEIS) on resident Canada goose management. In August 2003, we published a proposed rule to establish regulations to implement the DEIS proposed action, Alternative F. In November 2005, the notice of availability for a Final Environmental Impact Statement (FEIS) was published, followed by a 30-day public review period. This final rule sets forth regulations for implementing the FEIS preferred alternative, Alternative F, which would authorize State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The Record of Decision (ROD) is also published here.

DATES: This final rule will go into effect on September 11, 2006.

ADDRESSES: The public may inspect comments received on the DEIS and the proposed rule during normal business hours in Room 4107, 4501 North Fairfax Drive, Arlington, Virginia. You may obtain copies of the FEIS from the above address or from the Division of Migratory Bird Management Web site at *http://migratorybirds.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means it is compatible with the conventions to allow hunting, killing, and other forms of taking of migratory birds, their nests, and eggs. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. We have prepared these regulations compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of "The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States" provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a "closed season" on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

Background

In recent years, numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic growth to levels that are increasingly coming into conflict with people and causing personal and public property damage. We believe that resident Canada goose populations must be reduced, more effectively managed, and controlled to reduce goose-related damages. This rule would establish a new regulation authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The intent of this rule is to allow State wildlife management agencies and the affected public sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States when traditional and otherwise authorized management measures are unsuccessful in preventing injury to property, agricultural crops, public health, and other interests.

Population Delineation and Status

Waterfowl management activities frequently are based on the delineation of populations that are the target of management. Some goose populations are delineated according to where they winter, whereas others are delineated based on the location of their breeding grounds. For management purposes, populations can comprise one or more species of geese.

Canada geese (*Branta canadensis*) nesting within the conterminous United States are considered subspecies or

hybrids of the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. Canada geese are highly philopatric to natal areas, and no evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. Canada geese nesting within the conterminous United States in the months of March, April, May, or June, or residing within the conterminous United States in the months of April, May, June, July, and August will be collectively referred to in this rule as "resident" Canada geese.

The recognized subspecies of Canada geese are distributed throughout the northern temperate and sub-arctic regions of North America (Delacour 1954; Bellrose 1976; Palmer 1976). Historically, breeding Canada geese are believed to have been restricted to areas north of 35 degrees and south of about 70 degrees latitude (Bent 1925; Delacour 1954; Bellrose 1976; Palmer 1976). Today, in the conterminous United States, Canada geese can be found nesting in every State, primarily due to translocations and introductions since the 1940s.

The majority of Canada geese still nest in localized aggregations throughout Canada and Alaska and migrate annually to the conterminous United States to winter, with a few reaching as far south as northern Mexico. However, the distribution of Canada geese has expanded southward and numbers have increased appreciably throughout the southern portions of the range during the past several decades (Rusch *et al.* 1995). The following is a brief description of the status and distribution of the major management populations of Canada geese covered by this rule. (We note that there are a number of various surveys that utilize different methodologies, and resulting estimates can vary quite significantly between the various surveys and years. However, we believe all of the various data, when taken together, reinforce our conclusions).

In the Atlantic Flyway, the resident population of Canada geese nests from Southern Quebec and the Maritime Provinces of Canada southward throughout the States of the Atlantic Flyway (Sheaffer and Malecki 1998; Johnson and Castelli 1998; Nelson and Oetting 1998). This population is believed to be of mixed subspecies *(B. c. canadensis, B. c. interior, B. c. moffitti,* and *B. c. maxima)* and is the result of purposeful introductions by management agencies, coupled with released birds from private aviculturists and releases from captive decoy flocks after live decoys were outlawed for hunting in the 1930s. Following the Federal prohibition on the use of live decoys in 1935, Dill and Lee (1970) cited an estimate of more than 15,000 domesticated and semi-domesticated geese that were released from captive flocks. With the active restoration programs that occurred from the 1950s through the 1980s, the population grew to over 1 million birds and has increased an average of 2 percent per year since 1995 (Sheaffer and Malecki 1998; Atlantic Flyway Council 1999; U.S. Fish and Wildlife Service, 2004). In fact, 2005 spring surveys and estimates from the States of the Atlantic Flyway now total over 1.36 million geese, with a 3-year average of 1.32 million (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Mississippi Flyway, most resident Canada geese are giant Canada geese (*B. c. maxima*). Once believed to be extinct (Delacour 1954), Hanson (1965) rediscovered them in the early 1960s, and estimated the giant Canada goose population at about 63,000 birds in both Canada and the United States. In the nearly 40 years since their rediscovery, giant Canada geese have been reestablished or introduced in all Mississippi Flyway states. The breeding population of giant Canada geese in the Mississippi Flyway has exceeded 1.5 million individuals in recent years and has been growing at a rate of about 6 percent per year over the last 10 years (Rusch *et al.* 1996; Wood *et al.* 1996; Nelson and Oetting 1998; U.S. Fish and Wildlife Service, 2004). However, estimates resulting from spring breeding surveys have recessed slightly over the past 3 years and the latest 2005 spring surveys and estimates from the States of the Mississippi Flyway total about 1.25 million geese, with a 3-year average of 1.27 million (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Central Flyway, Canada geese that nest and/or reside in the States of the Flyway consist mainly of two populations, the Great Plains and Hi-Line. The Great Plains Population (Nelson 1962; Vaught and Kirsch 1966; Williams 1967) consists of geese (*B. c. maxima/B. c. moffiti*) that have been restored to previously occupied areas in Saskatchewan, North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas. For management purposes, this population is often combined with the Western Prairie Population (composed of geese (*B. c. maxima/B. c. moffiti/B. c. interior*) that nest throughout the prairie regions of Manitoba and Saskatchewan) and winter together from the Missouri River in South Dakota southward to Texas. The Hi-Line Population (Rutherford 1965; Grieb 1968, 1970) (*B. c. moffitti*) nests in southeastern Alberta, southwestern Saskatchewan and eastern Montana, Wyoming, and northcentral Colorado. The population winters from Wyoming to central New Mexico. Overall, these populations of large subspecies of Canada geese have increased tremendously over the last 30 years as the result of active restoration and management by Central Flyway States and Provinces. The current index for these populations in 2004 was over 837,000 birds, and has been growing at a rate of 7 percent (Great Plains and Western Prairie Populations) and 4 percent (Hi-Line Population), per year since 1995 (Gabig 2000; U.S. Fish and Wildlife Service, 2004). Looking at only the geese in the U.S. portion of these populations, the current 2005 spring estimate is approximately 590,000 with a 3-year average of 540,000 geese (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Pacific Flyway, two populations of the western Canada goose, the Rocky Mountain Population and the Pacific Population, are predominantly composed of Canada geese that nest and/or reside in the States of the Flyway. The Rocky Mountain Population (*B. c. moffitti*) nests from southwestern Alberta southward through the intermountain regions of western Montana, Utah, Idaho, Nevada, Colorado, and Wyoming. They winter southward from Montana to southern California, Nevada, and Arizona. Highly migratory, they have grown from a breeding population of about 14,000 in 1970 (Krohn and Bizeau 1980) to over 130,000 (Subcommittee on Rocky Mountain Canada Geese 2000). The 2004 estimated spring population was 152,000 and has increased 3 percent per year over the last 10 years; however, the mid-winter survey estimates have shown no apparent trend since 1995 (U.S. Fish and Wildlife Service, 2004). The Pacific Population (*B. c. moffitti*) nests from southern British Columbia southward and west of the Rockies in the States of Idaho, western Montana, Washington, Oregon, northern California, and northwestern Nevada (Krohn and Bizeau 1980; Ball *et al.* 1981). They are relatively nonmigratory and winter primarily in these same areas. Reliable survey estimates are not available.

Flyway Management Plans and Population Goals

The Atlantic, Mississippi, Central, and Pacific Flyway Councils are administrative bodies established to

cooperatively deliver migratory bird management under the flyway system. The Councils, which comprises representatives from each member State and Province, make recommendations to the Service on matters regarding migratory game birds. The Flyway Councils work with the Service and the Canadian Wildlife Service to manage populations of Canada geese that occur in their geographic areas. Since there are large numbers of resident Canada geese in each Flyway, the Councils developed and prepared cooperative Flyway management plans to address these populations and establish overall population goals and associated objectives/strategies. A common goal among the plans is the need to balance the positive aspects of resident Canada geese with the conflicts they can cause. While the Flyway Council system is cooperative in nature, the Service does not formally adopt Flyway management plans. However, because the Flyway Councils and States are the most knowledgeable sources regarding the establishment of goose population goals and objectives under their purview, we have attempted to incorporate the goals and objectives of the Flyways'' resident Canada goose management plans and their associated objectives into this rule. A more detailed discussion of the Flyway management plans, their specific goals and objectives, is contained in the EIS described in the **ADDRESSES** section of this document.

As we stated earlier, the objective of this rule is to allow State wildlife management agencies, private and public landowners, and airports sufficient flexibility to deal with problems, conflicts, and damages caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United State when traditional and otherwise authorized management measures are unsuccessful in preventing injury to property, agricultural crops, public health, and other interests. The goal of the program established by this rule will contribute to human health and safety, protect personal property and agricultural crops, protect other interests from injury, and allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese. Further, the program established by this rule is intended to be in accordance with the mission of the Service, effective, environmentally sound, cost-effective, and flexible enough to meet the variety of management needs found throughout the flyways and will not threaten viable resident Canada goose populations as determined by each Flyway Council and our obligations under the Act. Formulating such a national management strategy to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages, safety, and public health concerns was a complex problem, and Flyway input was essential for incorporating regional differences and solutions.

As such, we note that the overall population objectives established by the Flyways were derived independently based on the States'' respective management needs and capabilities, and in some cases, these objectives were an approximation of population levels from an earlier time when problems were less severe. In other cases, population objective levels were calculated from what was professionally judged to be a more desirable or acceptable density of geese with respect to conflicts. We further note that these population sizes are only optimal in the sense that it was each Flyway's best attempt to balance the many competing considerations of both consumptive (*i.e.*, hunters) and nonconsumptive (*i.e.*, bird watchers) users and those suffering economic damage. As with any goal or objective, we believe that these population objectives should be periodically reviewed and/or revised in response to changes in resident Canada goose populations, damage levels, public input, or other factors. Current resident Canada goose population estimates and population objectives for each Flyway are shown in Table 1. We note that over the most recent 3 years with complete estimates (2003–05), the total number of temperate-nesting Canada geese, or resident Canada geese, has averaged approximately 3.34 million in the United States and 1.37 million in Canada for a total spring population of 4.71 million (U.S. Fish and Wildlife Service, unpublished data, 2006). These estimates represent an increase in the average of approximately 150,000 geese in the United States (from 3.19 million) and 200,000 geese in Canada (from 1.17 million) from the 2000–02 average of 4.36 million. In fact, over the last six years, we estimate that U.S. populations have increased at an annual growth rate of 1.14 percent and Canada populations at 4.15 percent, resulting in an overall growth rate of 1.99 percent annually. The largest increases continue to be experienced in the States and Provinces of Atlantic Flyway, which increased from an average of 1.37 million for 2000–02 (1.15 million in the United States and 0.21 million in Canada) to 1.60 million for 2003–05 (1.32 million in the United States and 0.28 million in Canada).

TABLE 1.—RECENT RESIDENT CANADA GOOSE POPULATION ESTIMATES (2003–05 AVERAGE) AND POPULATION OBJECTIVES ON A FLYWAY BASIS

Current resident Canada goose population [a]	Atlantic Flyway	Mississippi Flyway	Central Flyway	Pacific Flyway
United States	1,324,261	1,277,804	540,723	199,011
Canada	284,422	225,571	452,578	413,743
Total	1,608,683	1,503,375	993,301	612,754

Resident Canada goose population objective	Atlantic Flyway [b]	Mississippi Flyway	Central Flyway [c]	Pacific Flyway
United States	620,000	949,000	368,833–448,833	[d] 54,840–90,900
Canada	30,000	180,000	.....	[d] 35,750–56,250
Total	650,000	1,132,000	.....	[d] 90,590–147,150

[a] Moser and Caswell, 2004.
[b] Atlantic Flyway Council Section 1999.
[c] Only U.S. States provided population objectives (Gabig 2000).

[d] Lower end of the Pacific Flyway population objective for the Pacific Population of Western Canada geese derived from "Restriction Level" and upper end derived from "Liberalization Level" as shown in *Management Plan for the Pacific Population of Western Canada Geese* (Subcommittee on Pacific Population of Western Canada Geese 2000). While the cited report refers to numbers of pairs, nests, and individual geese, the numbers shown here have been converted to numbers of individual geese.

Potential Causes of Population Growth and Past Attempts To Slow Growth

The rapid rise of resident Canada goose populations has been attributed to a number of factors. Most resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat (especially those located in urban/suburban areas with current landscaping techniques), and fly relatively short distances to winter compared with other Canada goose populations. This combination of factors contributes to consistently high annual production and survival. Further, the virtual absence of waterfowl hunting in urban areas provides additional protection to those urban portions of the resident Canada goose population. Given these characteristics, most resident Canada goose populations are continuing to increase in both rural and urban areas.

In order to reduce injury from resident Canada geese, we have attempted to curb the growth of resident Canada goose populations by several means. Expansion of existing annual hunting season frameworks (special and regular seasons), the issuance of control permits on a case-by-case basis, and a Special Canada goose permit (see June 17, 1999, **Federal Register** (64 FR 32766) for further information) have all been used with varying degrees of success. While these approaches have provided relief in some areas, they have not completely addressed the problem.

Normally, complex Federal and State responsibilities are involved with Canada goose control activities. All control activities, except those intended to either scare geese out of, or preclude them from using, a specific area, such as harassment, habitat management, or repellants, require a Federal permit issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (Wildlife Services). Wildlife Services is the Federal agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

Conflicts and Impacts

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, athletic fields, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

Property damage usually involves landscaping and walkways, most commonly on golf courses, parks, and waterfront property. In parks and other open areas near water, large goose flocks create local problems with their droppings and feather litter (Conover and Chasko, 1985). Surveys have found that, while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns, which results in a reduction of both the aesthetic value and recreational use of these areas, cause many landowners to view geese as a nuisance (Conover and Chasko, 1985).

Negative impacts on human health and safety occur in several ways. At airports, large numbers of geese can create a very serious threat to aviation. Resident Canada geese have been involved in a large number of aircraft strikes resulting in dangerous landing/take-off conditions, costly repairs, and loss of human life. As a result, many airports have active goose control programs. Excessive goose droppings are a disease concern for many people. Public beaches in several States have been closed by local health departments due to excessive fecal coliform levels that in some cases have been traced back to geese and other waterfowl. Additionally, during nesting and brood-rearing, aggressive geese have bitten and chased people and injuries have occurred due to people falling or being struck by wings.

Agricultural and natural resource impacts include losses to grain crops, overgrazing of pastures, and degrading water quality. In heavy concentrations, goose droppings can overfertilize lawns and degrade water quality, resulting in eutrophication of lakes and excessive algae growth (Manny et al., 1994).

Overall, complaints related to personal and public property damage, agricultural damage, public safety concerns, and other public conflicts have increased as resident Canada goose populations have increased.

We have further described the various impacts of resident Canada geese on natural resources, public and private property, and health and human safety in our EIS on resident Canada goose management. Due to the volume of technical information, we refer the reader to the EIS for specific details. Procedures for obtaining a copy of the EIS are described in the **ADDRESSES** section of this document.

Environmental Consequences of Taking No Action

We fully analyzed the No Action alternative with regard to resident Canada goose management in our EIS, to which we refer the reader (U.S. Fish and Wildlife Service 2005). In summary, we expect that resident Canada goose populations will continue to grow. Within 10 years, populations could approach 1.37 million in the Atlantic Flyway (using a population of around 1 million) and 1.8 million in the Mississippi Flyway. Within 5 years, populations could reach 1.07 million in the Central Flyway and 309,000 in the Pacific Flyway. Additionally, resident Canada goose problems and conflicts related to goose distribution are likely to continue and expand. Resident Canada geese will continue to impact public and private property, safety, and health, and impacts are likely to grow as goose populations increase. Lastly, both Federal and State workloads related to dealing with these increasing conflicts and populations will also increase.

Environmental Consequences of the Selected Action

We fully analyzed our selected action in the EIS on resident Canada goose management, to which we refer the reader for specific details (U.S. Fish and Wildlife Service 2005). In summary, under our preferred alternative, entitled "Integrated Damage Management and Population Reduction," we expect a reduction in resident Canada goose populations, especially in problem areas. We also expect significant reductions in conflicts caused by resident Canada geese; decreased impacts to property, safety, and health; and increased hunting opportunities. We expect some initial State and

Federal workload increases associated with implementation of the management strategies; however, over the long term, we expect that workloads would decrease. Lastly, we expect our action to maintain viable resident Canada goose populations.

Final Resident Canada Goose Regulations

Recently completed resident Canada goose modeling in Missouri (Coluccy 2000; Coluccy and Graber 2000), when extrapolated to the entire Mississippi Flyway, indicates that stabilization of the Mississippi Flyway's resident population at the current 1,582,200 geese would require one of several management actions: (1) The harvest of an additional 273,642 geese annually over that already occurring; (2) the take of 541,624 goslings per year; (3) a Flyway-wide nest removal of 338,630 nests annually; or (4) a combination of harvesting an additional 153,702 geese annually and the take of 203,719 goslings per year. Each of these management alternatives would be required annually for 10 years to overcome the current growth rates and stabilize the Flyway's population. Similar type numbers would be expected in the Atlantic and Central Flyway, while numbers would be correspondingly much smaller in the Pacific Flyway.

Thus, to merely stabilize the four Flyways' resident populations at the current level of approximately 3.68 million would require, at a minimum for the next 10 years, either the harvest of an additional 636,000 geese annually, the take of 1,258,000 goslings per year, a nation-wide nest removal of 787,000 nests annually, or a combination of the harvest of an additional 357,000 geese annually and the take of 473,000 goslings per year. While we realize that these numbers seem insurmountable and are simple extrapolations of one State-specific model (Missouri), we believe they are reliable enough to illustrate our point: The only way to possibly reduce injuries currently being caused by overabundant resident Canada geese is to utilize the abilities of airports, military airfields, private landowners, public land managers, agricultural producers, State wildlife agencies, and hunters and authorize them to address the problems and conflicts caused by resident Canada goose populations and to ultimately reduce populations. By addressing conflicts and population reductions on a wide number of available fronts, we believe the combination of various damage management strategies and population control strategies could successfully reduce numbers of resident Canada geese in specific problem areas and reduce or stabilize growth rates on a wider population-level scale. Since the States are the most informed and knowledgeable local authorities on wildlife conflicts in their respective States, we believe it is logical and proper to authorize them particularly to take adult resident Canada geese that they determine are responsible for injuries.

To give States the needed flexibility to address the problems caused by resident Canada geese, this rule would establish regulations consisting of three main program components. The first component would consist of four specific control and depredation orders (Airports, Nests and Eggs, Agricultural, and Public Health) designed to address resident Canada goose depredation, damage, and conflict management. These actions could be conducted by the appropriate State wildlife agency, U.S. Fish and Wildlife Service or other official agent (such as the U.S. Department of Agriculture's Wildlife Services), or in some cases, landowners and airport managers. The control and depredation orders would be for resident Canada goose populations only and, as such, could only be implemented between April 1 and August 31, except for the take of nests and eggs which could be implemented in March.

The second component would provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. This component would provide new regulatory options to State wildlife management agencies and Tribal entities by authorizing the use of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours (one-half hour after sunset) during existing, operational September Canada goose seasons (i.e., September 1–15). Utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (i.e., September 15–30) could be approved by the Service and would require demonstration of a minimal impact to migrant Canada goose populations. These seasons would be authorized on a case-by-case basis through the normal migratory bird hunting regulatory process. All of these expanded hunting methods and opportunities under Special Canada goose hunting seasons would be in accordance with the existing Migratory Bird Treaty frameworks for sport hunting seasons (i.e., 107-day limit from September 1 to March 10) and would be conducted outside of any other open waterfowl season (i.e., when all other waterfowl and crane hunting seasons were closed).

The third component would authorize the Director to implement a resident Canada goose population control program, or management take (defined as a special management action that is needed to reduce certain wildlife populations when traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese). Following the conclusion of the first full operational year of this rule, any wildlife agency from a State or Tribe in the Atlantic, Mississippi, and Central Flyway could request approval for this population control program. A request must include a discussion of the State's or Tribe's efforts to address its injurious situations utilizing the methods approved in this rule or a discussion of the reasons why the methods authorized by these rules are not feasible for dealing with, or applicable to, the injurious situations that require further action. Discussions should be detailed and provide the Service with a clear understanding of the injuries that continue, why the authorized methods utilized have not worked, and why methods not utilized could not effectuate resolution of the injuries. We note that a State's request for approval may be for an area or areas smaller than the entire State. Following receipt and review of the State's request, the Director may or may not authorize implementation of a managed take program in the State in question.

Management take would enable States and Tribes to use hunters to harvest resident Canada geese, by way of shooting in a hunting manner, during the August 1 through August 31 period. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops, protect other interests from injury, resolve or prevent injury to people, property, agricultural crops, or other interests from resident Canada geese, and contribute to potential concerns about human health when all other methods fail to address, or are not feasible for dealing with, or applicable to, the injuries caused by resident Canada geese. States and Tribes would be required to designate participants operating under the conditions of the management take program and keep annual records of

activities carried out under the authority of the program. Additionally, participating States and Tribes would be required to monitor the spring breeding population by providing an annual estimate of the breeding population and distribution of resident Canada geese in their State in order to assess population status.

We would annually assess the overall impact and effectiveness of the management take program on resident Canada goose populations to ensure compatibility with long-term conservation of the resource and its effect on injuries from resident Canada geese. If at any time evidence is presented that clearly demonstrates that a resident Canada goose population no longer needs to be reduced in order to allow resolution or prevention of injury to people, property, agricultural crops, or other interests, we would suspend the program for the resident Canada goose population in question. However, resumption of injuries caused by growth of the population in question and not otherwise addressable by the methods in this rule could warrant reinstatement of the program to control the population. Depending on the location of the injury or threat of injury, it is possible that a management take program could be in effect for one or more resident Canada goose populations, but not others.

Overall, the management take component, the expanded hunting methods and opportunities component, and the agricultural depredation order would be restricted to the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Only State wildlife agencies and Tribal entities in these States could authorize the use of these components for resident Canada geese in the Atlantic, Central, and Mississippi Flyway portions of these States.

In addition to the three main new components, we would continue the use of special and regular hunting seasons, issued under 50 CFR part 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively.

Changes From the Proposed Rule

Administration and Organization of Proposed Action

To better relate the goals and objectives of the overall program, we separated the program into two main areas: depredation/damage/conflict management and population reduction/control. The depredation/damage/conflict management objective is addressed through the various specific depredation orders. The population reduction/control objective is addressed through the other two main components of the program: the increased hunting methods and opportunities and the managed take component. We believe this reorganization makes the entire program better understood and administratively better organized.

Further, we have clarified that the third component of the program, the management take component, is intended as a method to address injury from resident Canada geese when other methods have failed to do so (see further discussion below under *Population Control/Reduction Components*).

Airport Control Order

We have removed the Airport Control Order from under the State's direct control for implementation and made it a stand-alone control order, *i.e.*, under our direct control and supervision. The State would continue to have the legal ability to impose either further State restrictions on the program if they so wish or decline participation of airports in their State. As with all Federal regulations, the State may always be more restrictive. We believe the issues surrounding public safety at airports and military airfields warrant this administrative change. The State will not have to expend resources monitoring and administrating this element of the program and the change further sets the stage for either adding additional species to the control order (should they be warranted) or doing an airport control order that encompasses all migratory bird species.

Second, we have added military airfields to the Airport Control Order. Military airfields are a significant component of the Nation's overall air traffic and warrant inclusion in any resident Canada goose airport control program.

Nests and Egg Depredation Order

Similar to the Airport Control Order, we have removed the Nest and Egg Depredation Order from under the State's direct control for implementation and made it a stand-alone depredation order, i.e., under our direct control and supervision. The State would continue to have the legal ability to impose either further State restrictions on the program if they so wish or decline participation of private landowners and public land managers in their State. As with all Federal regulations, the State may always be more restrictive. We believe the large number of existing nest and egg permits, the minimal amount of environmental review currently being conducted, and the potential increased burden of placing the administration of this program with the State warrant this administrative change. The State will not have to expend resources reviewing, monitoring, and administrating this element of the program. Since significant numbers of comments both from the States and numerous nongovernmental organizations centered on the States having to assume control of this issue and possibly issue permits, our decision to make it a stand-alone depredation order under our direct control should alleviate those concerns.

Public Health Control Order

Under the proposed Public Health Control Order, the authority to conduct management and control activities was entrusted with the State, County, municipal, or local public health agency if the State decided to implement the Public Health Control Order component. We realize that most authorized management activities would not be conducted by the public health agency but would likely be conducted by the State wildlife agency, Wildlife Services, or a private contractor. We have removed the public health agency as the primary implementing entity and have identified the State wildlife agency (or their agent) as the implementing entity as long as the State, County, or local health agency recommends management action.

Further, resident Canada geese eligible for management actions must pose a direct threat to human health. A direct threat to human health is defined as one where a Federal, State, or local public health agency has determined that resident Canada geese pose a specific, immediate human health threat because of conditions conducive to the transmission of human or zoonotic pathogens. Situations where resident Canada geese are merely causing a nuisance would not be eligible.

Population Control/Reduction Components

With the administrative reorganization of the overall program, the changes made to the control and depredation orders, and our

reevaluation of the existing Special Canada Goose Permit (50 CFR 21.26), we have eliminated the State agency population control component within the proposed rule. Our reason in doing so was our belief that this component, outside of the management take component, was largely duplicative of already authorized management activities contained in the existing Special Canada Goose Permit.

Currently 18 States are operating under the Special Canada Goose Permit (Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Oklahoma, South Dakota, Virginia, and Wyoming). The number of States operating under this permit has grown steadily since its inception in 1999. As recently as 2000, only five States were operating under the special permit (Michigan, Minnesota, Missouri, Ohio, and South Dakota) with no States in the Atlantic Flyway. The increased use of this permit, along with the some of the overlapping aspects of the Special Canada Goose Permit with our proposed rule's State population control component, confirm our belief that this component should be eliminated.

We have, however, retained the management take component with some modification and clarification as to when it takes effect or is implemented. Based on comments we received, there were some questions as to when this component could be implemented. The management take component is intended as a method to address injury from resident Canada geese only when other methods have failed to do so. Under this component as modified, the Director, after finding that traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese may authorize States and Tribes to implement a managed take program to remedy these injuries by issuance of an Order. While the management take component is dependent on implementation and regulation by the State or Tribe, it is not solely a State-conducted management activity, like the State population control component was in the proposed rule. Further, the management take component remains dependent on State surveys and will be the first component to be eliminated once the population reaches a level that its use is no longer necessary to reduce injuries. We continue to believe that if a State desires to address injuries via management take, it should be incumbent on them to provide additional population status information since this component is a more broad-based management action.

Pacific Flyway

We have dropped participation and applicability of States in the Pacific Flyway from some program components in the final rule. The Pacific Flyway Council and Pacific Flyway States have consistently commented that they do not wish to participate in any new regulations and that they do not have the same resident Canada goose problems that the rest of the country, in particular the eastern and Great Lakes regions of the United States, currently is experiencing. From a population status information standpoint, evidence warranting inclusion in the proposed alternative was somewhat ambiguous in the Pacific Flyway, other than specific localized instances. The Pacific Flyway generally lacks good resident goose breeding and population surveys, numbers of geese are not as significant as other parts of the country, and the problems/issues/conflicts are more isolated and localized. Thus, we have dropped the States of the Pacific Flyway from all components except the Nest and Egg Depredation Order, the Public Health Control Order, and the Airport Control Order. Based on comments and our analysis, we believe the agricultural depredation issue in the Pacific Flyway is primarily a migrant Canada goose issue, not a resident Canada goose issue.

Management Take in September

In the proposed rule, we had proposed the use of management take during the first 15 days of September. We have eliminated that provision in this final rule. Traditionally, we have used special Canada goose seasons in September to target resident goose populations and address some of the conflicts and problems caused by overabundant resident Canada geese. The primary issue with extending a management take type action into September is that we know some migrant geese in some areas will be taken. In particular, areas in the upper midwest (Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, and Montana) would have some level of migrant geese taken. Our information is based on studies these States conducted on their existing September special Canada goose seasons. However, we note that all areas in question fall within the existing special September Canada goose season criteria of less than 10 percent migrant geese. Since the management take component, as is the entire scope of the rule, is specifically directed at resident Canada geese, we cannot reliably extend this component into September.

Tribal Entities

Beginning with the 1985–86 hunting season, we have employed guidelines to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These guidelines were developed in response to tribal requests for recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation. Because of the ongoing relationship we enjoy with the participating tribes (approximately 30 annually), and their full wildlife management authority on tribal lands, we have decided to include their participation in several of the program components. More specifically, tribal eligibility under the specific depredation and control orders and the management take component is included in this rule. Currently, there are approximately 13 tribes participating in the Atlantic, Mississippi, and Central Flyways.

References

A complete list of citation references is available upon request from the Division of Migratory Bird Management (see **ADDRESSES**).

Public Comments and Responses to Significant Comments

On March 1, 2002 (67 FR 9448), the Environmental Protection Agency published a Notice of Availability of our DEIS. On March 7, 2002 (67 FR 10431), we published our own Notice of Availability of the DEIS. We published a Notice of Meetings on the DEIS on March 26, 2002 (67 FR 13792). Initial comments were accepted until May 30, 2002. We subsequently published another Notice of Availability reopening the comment period on August 21, 2003 (68 FR 50546). Also on August 21, 2003,